



**UNITED STATES DEPARTMENT OF COMMERCE**

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|                 |             |                      |                     |
|-----------------|-------------|----------------------|---------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|

*mk*  
EXAMINER

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

|                 |             |                |       |
|-----------------|-------------|----------------|-------|
| Application No. | 09/1003133  | Applicant(s)   | Roddy |
| Examiner        | P. Anderson | Group Art Unit | 1761  |

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on 9-25-00

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 10 - 26 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 10 - 26 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

|  |   |
|--|---|
| <input type="checkbox"/> Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ | <input type="checkbox"/> Interview Summary, PTO-413                     |
| <input type="checkbox"/> Notice of Reference(s) Cited, PTO-892                             | <input type="checkbox"/> Notice of Informal Patent Application, PTO-152 |
| <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review, PTO-948           | <input type="checkbox"/> Other _____                                    |

## Office Action Summary

Art Unit:

1. The request filed on September 25, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/002133 is acceptable and a CPA has been established. An action on the CPA follows.

The rejection of the claims under 35 USC 102(e) has been dropped because the examples cited in the last office action do not set forth the combination of a mesomorphic phase and a gelled biopolymer.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heertje in view of Singer.

Heertje discloses low fat spreads and dressings that contain mesomorphic phases with fat, biopolymers and edible surfactants. At example 6 the spread is formed by combining 50% of each of a mesomorphic phase and an aqueous phase. The mesomorphic phase is formed into a homogeneous viscous mixture that has an egg white like consistency, which is cooled and sheared to 5C. The aqueous phase is formed from gelatin into a slurry of gelled particles. This phase has a flavour of less than 0.0048%. These two phases are then combined together and a spread is then finally formed. The claims appear to differ from the reference in the recital of the use of a lipophilic flavor. Singer teaches a lipophilic flavor delivery system for fat free foods. The product

Art Unit:

is seen to be lipophilic because it contains flavor-filled fat globules. It would be obvious to one of ordinary skill in the art to use the flavor delivery system of Singer in the spread of Wesdorp in order to enhance the flavor of the product without adding a lot of fat to the product.

This is a CPA of applicant's earlier Application No. 09/002,133. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Paden whose telephone number is (703) 308-3294. The examiner can normally be reached on Monday to Friday from 8:30 to 4:00.

The fax phone number for this Group is (703) 305-3599 or 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

*Carolyn Paden*  
CAROLYN PADEN 10-30 00  
PRIMARY EXAMINER  
GROUP 1300 1761